

ASSEMBLY BILL

No. 58

**Introduced by Assembly Member Keeley
(Coauthors: Assembly Members Hertzberg, Kehoe, Leonard,
Wesson, and Wright)**

December 4, 2000

An act to amend Sections 335, 337, and 338 of, and to add Section 352 to, the Public Utilities Code, relating to public utilities, and declaring the urgency thereof, to take effect immediately.

LEGISLATIVE COUNSEL'S DIGEST

AB 58, as introduced, Keeley. Electrical restructuring: Oversight Board: Independent System Operator: Power Exchange.

(1) The Public Utilities Act provides for the establishment of an Independent System Operator and a Power Exchange as separately incorporated public benefit, nonprofit corporations, each governed by a governing board composed as prescribed, including, but not limited to, representatives of specified groups. Existing law provides that, prior to a specified agreement, the state retains the right to change the Independent System Operator and the Power Exchange governing boards into nonstakeholder boards. An Electricity Oversight Board is established by the act to oversee the Independent System Operator and the Power Exchange. The board determines the composition of the governing boards and the terms of service of the members, and exercises the exclusive right to decline to confirm the appointments of specific members of the governing boards of the Independent System Operator and the Power Exchange.

This bill would amend the act to remove those provisions requiring the governing boards to include those specified representatives. The bill

would make conforming changes regarding the board's authority. The bill would prohibit the Independent System Operator from entering into a multistate entity or a regional organization unless that entry is approved by the board. Since a violation of the act is a crime, this bill would impose a state-mandated local program by establishing a new crime. The bill would make related legislative findings and declarations and statements of legislative intent.

(2) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

(3) This bill would declare that it is to take effect immediately as an urgency statute.

Vote: ²/₃. Appropriation: no. Fiscal committee: yes. State-mandated local program: yes.

The people of the State of California do enact as follows:

1 SECTION 1. (a) The Legislature finds and declares all of the
2 following:

3 (1) In restructuring electricity in 1996, the Legislature
4 established the Independent System Operator and the Power
5 Exchange, each with governing boards with designated
6 representatives from the investor-owned utility transmission
7 owners, publicly owned utility transmission owners, nonutility
8 electricity sellers, public and private buyers and sellers,
9 consumers, public interest groups, and nonmarket participants.

10 (2) It was the intent of the Legislature and the Governor in
11 establishing the Independent System Operator and the Power
12 Exchange that the two organizations would not expose California
13 citizens to undue economic risk.

14 (3) It is now necessary to change the structure of governance of
15 the Independent System Operator and the Power Exchange to
16 ensure that the economic interests of California's citizens are
17 protected from an unstable electricity market at least during a
18 period of transition until a fully functional electricity market is
19 established and demonstrated.



1 (4) On November 1, 2000, the Federal Energy Regulatory
2 Commission (FERC), which regulates the services provided by the
3 Independent System Operator and the Power Exchange under the
4 Federal Power Act (16 U.S.C.A. Sec. 791a et seq.), issued an order
5 that, if implemented, would restructure the governing boards of
6 the Independent System Operator and the Power Exchange in a
7 manner that is likely to conflict with existing state law.

8 (b) It is the intent of the Legislature that the Electricity
9 Oversight Board, which is responsible for confirming the
10 appointments to the governing boards of the Independent System
11 Operator and the Power Exchange, shall make appointments such
12 as it determines to be appropriate, qualified, and necessary.

13 SEC. 2. The Legislature further finds and declares all of the
14 following:

15 (a) In establishing the Independent System Operator and the
16 Power Exchange, the Legislature and the Governor intended that
17 the two entities should evolve into, or otherwise establish through
18 compact or other agreement, regional transmission organizations
19 to increase access of consumers to the electricity markets of other
20 states.

21 (b) In view of the instability of the California electricity market
22 and the transitional nature of the electricity sector restructuring, it
23 is premature for the Independent System Operator or the Power
24 Exchange to undertake steps that would further commit California
25 citizens to the form and substance of the restructuring that was
26 originally contemplated unless it has been clearly established to be
27 in the interest of California's citizens.

28 (c) Entering into a compact or an agreement that would extend
29 California's electric sector into a regional transmission grid may
30 not be appropriate at this time.

31 SEC. 3. Section 335 of the Public Utilities Code is amended
32 to read:

33 335. In order to ensure that the interests of the people of
34 California are served, a five-member Electricity Oversight Board
35 is hereby created as provided in Section 336. For purposes of this
36 chapter, any reference to the Oversight Board shall mean the
37 Electricity Oversight Board. Its functions shall be all of the
38 following:

39 (a) To oversee the Independent System Operator and the Power
40 Exchange.

(b) To determine the composition of the board and the terms of service of the members of the board and to exercise the exclusive right to confirm or decline to confirm the appointments of specific members of the governing boards of the Independent System Operator and the Power Exchange, as specified in subdivision (d).

(c) To serve as an appeal board for majority decisions of the Independent System Operator governing board, as they relate to matters subject to exclusive state jurisdiction, as specified in Section 339.

~~(d) Those members of the Independent System Operator and Power Exchange governing boards whose appointments the Oversight Board has the exclusive right to decline to confirm include proposed governing board members representing agricultural end-users, industrial end-users, commercial end-users, residential end-users, end-users at large, nonmarket participants, and public interest groups.~~

SEC. 4. Section 337 of the Public Utilities Code is amended to read:

337. The Oversight Board shall have the exclusive right to approve procedures for the election and submission for confirmation and the qualifications for Independent System Operator governing board members specified in subdivision (d) of Section 335, all of whom shall be required to be electricity consumers in the area served by the Independent System Operator. ~~The Independent System Operator governing board shall include, but not be limited to, representatives of investor-owned utility transmission owners, publicly owned utility transmission owners, nonutility electricity sellers, public buyers and sellers, private buyers and sellers, industrial end-users, commercial end-users, residential end-users, agricultural end-users, public interest groups, and nonmarket participant representatives. A simple majority of the board shall consist of persons who are themselves unaffiliated with electric generation, transmission or distribution corporations. The structural composition of the Independent System Operator governing board existing on July 1, 1999, shall remain in effect until an agreement with a participating state is legally in effect. However, prior to such an agreement, California shall retain the right to change the Independent System Operator governing board into a nonstakeholder board. In the event of such a legislative change, revised bylaws shall be filed with the Federal~~

~~Energy Regulatory Commission under Section 205 of the Federal Power Act (16 U.S.C.A. Sec. 824d).~~

SEC. 5. Section 338 of the Public Utilities Code is amended to read:

338. The Oversight Board shall have the exclusive right to approve procedures and the qualifications for Power Exchange governing board members ~~specified in subdivision (d) of Section 335~~, all of whom shall be required to be electricity customers in the area served by the Power Exchange. ~~The Power Exchange governing board shall include, but not be limited to, representatives of investor-owned electric distribution companies, publicly owned electric distribution companies, nonutility generators, public buyers and sellers, private buyers and sellers, industrial end-users, commercial end-users, residential end-users, agricultural end-users, public interest groups, and nonmarket participant representatives. The structural composition of the Power Exchange governing board existing on July 1, 1999, shall remain in effect until an agreement with a participating state is legally in effect. However, prior to such an agreement, California shall retain the right to change the Power Exchange governing board into a nonstakeholder board. In the event of such a legislative change, revised bylaws shall be filed with the Federal Energy Regulatory Commission under Section 205 of the Federal Power Act (16 U.S.C.A. Sec. 824d).~~

SEC. 6. Section 352 is added to the Public Utilities Code, to read:

352. The Independent System Operator may not enter into a multistate entity or a regional organization as authorized in Section 359 unless that entry is approved by the Oversight Board.

SEC. 7. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.

SEC. 8. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety

1 within the meaning of Article IV of the Constitution and shall go
2 into immediate effect. The facts constituting the necessity are:

3 In order to make the Independent System Operator and the
4 Power Exchange more accountable to the people of this state by
5 eliminating stakeholder governing boards, thereby acting to
6 mitigate the state's current energy crisis, it is necessary for this act
7 to take effect immediately.

